

The Nebraska Greenbelt Advisory Committee

A Report to the Legislature and Property Tax Administrator

Submitted: November 1, 2006

Prepared by:

John Moore, Lexington, county assessor, Committee Chairman

Committee members:

Darla Svoboda, Aurora, County Planning and Zoning, Vice Chair

James M. Hanna, Thedford, Active Rancher, Past Chairman

Dr. Bruce Johnson, Bennet, Professor of Agricultural Economics

Al Svajgr, Cozad, Active Farmer

Ken Stephens, Valentine, Licensed Appraiser

Richard Pierce, Miller, County Official

Jean Rhodes, Bridgeport, County Attorney

PREFACE

Mission Statement Nebraska Greenbelt Advisory Committee:

To monitor and evaluate the development and execution of greenbelt provisions across Nebraska's counties, and offer advice for reasonable policy concerning the differentiation of agricultural use valuation relative to other uses.

Under the authority granted to it through the enactment of Legislative Bill 1124 the Nebraska Greenbelt Advisory Committee met in 2006 to continue the discussion and offer rationale that will assist in the use of special valuation (greenbelt) by county assessors throughout Nebraska.

The committee is charged with developing recommendations for both the Legislature and Property Tax Administrator and as a result considered the following during its discussions:

- a) The approach to defining the term "agricultural parcel" and establishing a test for what "use" constitutes an agricultural or horticultural practice. As part of the criteria, include a review process that involves regular inspection of property to assure the proper use is continuing.
- b) A possible change in make-up of committee membership.

The following report is a compilation of discussions held at the Midtown Holiday Inn in Grand Island on August 31, 2006, as well as materials offered by various sources concerning the subject of agricultural valuations in general, and special valuation in particular.

The make-up of the committee is such that a widespread variety of perspectives were brought to the table for discussion. Advice and opinions were also sought and welcomed from Property Tax Administrator, Catherine Lang. Assistance was greatly appreciated as well from the Department of Property Assessment and Taxation (DPAT) staff, particularly Laz Flores who is the Committee Aide.

Summary

The business considered before the Greenbelt Advisory Committee (GBAC) in 2006 focused mainly on the response to changes in statutes stemming from 2006 legislation. It was noted that a number of suggestions that appeared in the 2005 annual report became part of the exchange of ideas in several legislative bills approved in the 2006 legislative session.

One of those discussion points, the definition of agricultural parcel, continues to draw interest. To that end the committee is encouraging county assessors and their boards of supervisors or commissioners to establish a useful definition for agricultural parcel within each of their counties. To further bring some continuity to the process, the county officials may benefit from sharing the result of their work with Property Tax Administrator Ms. Lang and her staff, who in turn can make that information available statewide.

This change in dealing with a parcel definition was initiated in LB 407 in 2005, which came out of the Revenue Committee under the guidance of Senator Ron Raikes and was eventually amended into LB 808 in the 2006 session. Information offered by county officials from eastern Nebraska noted that parcels of any acre size in those counties are influenced so much by non-agricultural market factors, that “use” has become a fundamental issue in the application of greenbelt or special valuation. Many of those counties (Douglas, Lancaster, and Sarpy for example) have for years placed non-agricultural market values on all land within their borders. These values are usually higher than those verified in a strictly agricultural market. Landowners must apply for special valuation status to obtain lower agricultural market valuations. That has created a need to hit upon a test that may be helpful in determining what is agricultural use.

Shaping the criteria of “use” as it relates to the definition of parcel has become problematic. What terms may work well in Lancaster County could be totally unsuitable to Cherry County. There are pitfalls in many directions.

The GBAC discussion on this matter included consideration on the basis of size of the parcel, the owner’s background, the sale price, and the degree of what may be considered an agricultural use. The Committee is not endorsing the implementation of language limited to these subjects, but only offers these ideas as a starting point for discussion so each county might arrive at a conclusion for what designates an agricultural use, and therefore, how that might affect the application of special valuation.

It is suggested, to be constructive, the criteria within a county need to offer flexibility. It also is suggested that a routine review process should be included as part of the policy, such as annual examination of the use of the property.

Any sort of test for use might include criteria of:

- Income generated directly from commercial agricultural production, as opposed to income incidental to the use of the parcel;
- Zoning regulations as they pertain to parcel size;

- Practices that constitute commercial farming or ranching:
 - What is meant by “primarily” used for?
 - What is the intended use by the owner?
 - Does the use hook with a time element such as a growing season?

The ability to collect pertinent data may be a barrier. The history of this issue had at one time required that an owner file a form with an assessor, stipulating an income threshold on smaller parcels. Resurrecting a statewide form did not receive popular support among the officials at the Grand Island meeting. Many assessors instead recognize federal farm programs that provide some income as one basis for defining agricultural use.

Commentary before the Committee indicated that limitations in terms of defining a parcel size evolved out of zoning regulations within each county. The number of acres most often used to define nonagricultural status within county zoning regulations appears to be 20 or less. Part of the change of statutes in 2006 involved the exclusion of zoning requirements for greenbelt designation. This, however, does not preclude possible use of zoning features in developing a definition and use test, apart from the application of zoning restrictions.

Agricultural and horticultural land, and likewise products raised on this type of land, is redefined in the new legislation that becomes operative in 2007. The term “predominantly used for” has now become “primarily used for” and the sense of how that applies within each county may be the starting point for any change in policy locally. For example, there has been at least one determination by the Tax Equalization and Review Commission that placing a few foraging animals on a parcel does not necessarily define that use as agricultural. The case in point involved two buffaloes.

The committee discussion also concerned whether the amount of valuation as it is attributed to the various uses of a parcel might help with a definition. A prime example involves whether the residential value far outstrips the lesser value ascribed to an incidental agricultural use? This is sometimes referred to as “hobby farming.”

Some other parameter might include time elements, particularly crop growing, or grazing seasons. A major point of contention may develop as to whether the owner is using the land “primarily” for commercial agricultural purposes, and how that primary use reflects in terms of how the owner intends to use the parcel. Defining what crop or product constitutes an agricultural or horticultural use would be helpful, but the Committee notes there can be a serious challenge in trying to limit these crops or products.

Aside from encouraging county officials to develop a policy regarding the definition of an agricultural parcel, the GBAC is also suggesting that some realignment of the committee’s membership may be advisable, keeping in mind that the configuration should include an odd number to avoid the possibility of a tie vote.

November 1, 2006

The Committee's mission appears to have changed somewhat from a strictly advisory role to more of an advocacy group that offers opinions on legislation and helps promote the use of special valuation. To that end, in 2005 and earlier in 2006 it concentrated on developing and promoting educational tools to help improve an understanding of what the application of greenbelt can mean to property owners. There was also testimony offered on several legislative bills.

As a result, changes in statutes involving zoning, and area agricultural valuation boards, have prompted the committee to ask for membership changes.

It is recommended that the committee position of a county zoning administrator be eliminated. The current administrator Darla Svoboda who has served on the GBAC from its inception noted that zoning officials could be available in the future for advice if asked.

The stipulation that requires a county official serving on an area agricultural valuation board to be represented on the committee needs to be changed since those boards no longer exist. The committee recommends the retention of the member with a simple change in the title.

The county attorney representative Jean Rhodes observed that her role on the GBAC has become more personally educational, than that of a legal advisor as first intended by the original legislation. Given the caseload of most county attorneys, and that the staff of DPAT could provide needed legal interpretation, the committee is recommending that consideration be given to eliminating this position as well.

Discussion by the members noted that with the changes perhaps it would be helpful to have an eastern Nebraska representative on the committee who is familiar with the day-to-day workings of special valuation.

Respectfully submitted on behalf of the Committee,

John Phillip Moore
Assessor representative and chairman

Appendix

Materials listed here, are on file with the DPAT and available for inspection upon request at those offices in Lincoln, NE.